

1 And they knew what needed to be in the application for
2 extension.

3 Q Did it not cross your mind at the time to insert the
4 fact that Raystay had no idea whether it would ever start
5 construction of these stations?

6 A Well, I can't see the future that well. The reason
7 we applied for these construction permits in the first place
8 was to put them on the air. And my difficulty with TV40
9 caused me to go much slower than I probably would have if I
10 hadn't had the TV40 experience.

11 But we still were hopeful that we would find a way
12 to make it work. We did dedicate a lot of time to it. And we
13 had several situations that I felt were going fairly well.
14 And the application for extension was something that we needed
15 to do.

16 And we not only had the business plan that we're
17 talking about with the cable systems, but we had Mr. Shaffner
18 who was going to take TV40 off our hands. And I was
19 interested in preserving the construction permits in the event
20 that he wanted those. We had certainly a situation with
21 Trinity that I had to back out of. But that didn't mean to me
22 that Trinity was the only group that would have been
23 interested in taking TV40 and probably be interested in the
24 CPs along with it.

25 I thought our plan was pretty good. We just

1 | couldn't find a way to implement it. But that didn't at that
2 | time mean to me that no one else was going to put a plan
3 | together.

4 | Q Did, did it cross your mind when you, when you
5 | reviewed the -- to tell the Commission that you were offering
6 | these construction permits for sale to other parties?

7 | A I don't believe we offered them for sale. I believe
8 | that we had a concept of a network that had TV40 as its base.
9 | And if TV40 was sold, then the construction permits may have
10 | been of interest to the purchaser. And yes, we would have
11 | sold them, because they would have not been any use to us
12 | without TV40.

13 | Q You told that, none of that to the Commission,
14 | though, in this application.

15 | A As I say, David Gardner knew what we were doing.
16 | And Mr. Cohen worked with David Gardner to put this exhibit
17 | together. And certainly anything that we were doing was
18 | available to Mr. Cohen if he felt it was needed to be put in
19 | the exhibit.

20 | I never gave it a thought that something like that
21 | should be in the exhibit. I didn't really know what the
22 | Commission wanted to see in the exhibit. I presumed Mr. Cohen
23 | was putting it together the way the Commission wanted it.

24 | Q Well, Mr. Gardner, whose signature is it on these
25 | applications?

1 A My signature is on it.

2 Q It's not Mr. Cohen's signature.

3 A But Mr. Emmons --

4 MR. SCHAUBLE: Objection. It's argumentative, Your
5 Honor.

6 JUDGE CHACHKIN: I'll overrule the objection. Go
7 ahead.

8 MR. GARDNER: Mr. Emmons, you've got to realize that
9 if I could enter this application at the FCC myself, I'd sure
10 save a lot of money if I didn't have to hire Mr. Cohen. And
11 the reason I pay that money Mr., to Mr. Cohen is because I
12 need his expertise.

13 BY MR. EMMONS:

14 Q You made a pledge to the Commission in 1990, didn't,
15 didn't you, that henceforth you would personally review all
16 statements and applications filed by Raystay to the FCC to
17 ensure that they were fully accurate and that they disclosed
18 all pertinent facts?

19 A I think I've done that.

20 Q And, and that was a pledge by you, not by your
21 counsel.

22 A I, I gave the pledge myself, and I think I've
23 fulfilled it.

24 Q And, and you understood, did you not, that the FCC
25 would be relying on you as the applicant or the licensee and

1 not on your counsel.

2 A That's correct.

3 Q And did you not think then that you had some
4 obligation to do more than simply accept without question
5 whatever your counsel may have put before you?

6 A Mr. Cohen --

7 MR. SCHAUBLE: Objection, Your Honor.

8 JUDGE CHACHKIN: I'll sustain the objection.

9 That's, that's -- we, we -- the witness has testified over and
10 over again his reasoning and what he did, and that's in the
11 record. There's no point in going over and over it. You can
12 make your arguments in your finding.

13 BY MR. EMMONS:

14 Q Mr. Gardner, the Commission did in fact grant these
15 December 1991 applications, correct?

16 A Yes.

17 Q And they granted them for a period of 6 months?

18 A Yes.

19 Q And the expiration date of the extended permits was
20 July 1992?

21 A Yes.

22 Q And it is true, is it not, that still by July 1992
23 Raystay had not started any construction.

24 A That's correct.

25 Q And it's true that the reason that no construction

1 had been started was that you still had not developed a viable
2 business plan.

3 A That's correct.

4 Q And it's true also in July 1992 that you, you did
5 not have any idea when you would start construction of these
6 stations.

7 A That's correct.

8 Q And it's true in July 1992 likewise that you did not
9 even know whether Raystay ever would start construction of
10 these stations.

11 A That's correct.

12 Q Now would you turn to TBF Exhibit 248 please. In
13 volumes 3D.

14 A Yes, I have it.

15 Q And you see that this is a letter dated June 12,
16 1992 from David Gardner to a company, a post office box in
17 Florida?

18 A Yes.

19 Q And my question to you is you were aware, were you
20 not, that Raystay was actively looking for buyers of the
21 construction permits.

22 A I don't believe Raystay was actively looking for a
23 buyer. I wasn't aware of this. And I had no knowledge of it.

24 Q You were not aware in June of 1992 that Raystay was
25 looking for buyers of the construction permits?

1 A I don't believe Raystay was looking for buyers of
2 the construction permits. The only time other than the sale
3 of the one construction permit to Grolier (phonetic sp.) that
4 Raystay ever intimated they would sell the construction
5 permits was in conjunction with TV40. This is completely
6 outside of that framework, and I have no idea the
7 circumstances on it. I was not aware of it.

8 Q So it's, it's your testimony then that you did not
9 authorize the expression that's reflected in this, in this
10 letter of June 12th?

11 A The only thing that I can say that might have
12 triggered this was my request that everyone that was involved
13 with this not turn down any situation that made sense. And I
14 believe David perhaps may have misconstrued me on that that I
15 meant to sell the CPs. I did not tell him that. I never gave
16 anyone that instruction. I believe --

17 Q Did you ever -- excuse me. I'm sorry.

18 A Go ahead.

19 Q Have you finished?

20 A I believe this perhaps was just a misunderstanding.

21 Q Well, did you ever give the instruction to your
22 staff that there would be no sale of the low-power permits by
23 themselves but only in conjunction with TV40 apart from the
24 Red Lion permit that you testified --

25 A I don't recall making a statement like that, no.

1 Q So you, you did not make clear to your staff what
2 you're now saying today. Is that correct?

3 A I think I have a note that very clearly says what I
4 meant. Sell to anyone else except Trinity. It was that
5 statement. And I was talking about TV40. As far as selling
6 the CPs, the only CP that we even considered selling was the
7 one to Grolier. And it was one that didn't fit the plan.

8 Q You mentioned the name Grolier just a moment ago.
9 Did you mean Grolman?

10 A I'm sorry. Grolman, yes.

11 Q Now TBF Exhibit 251, would you turn to that please?

12 A Yes, I have it.

13 Q And I will tell you that these in this exhibit are
14 the four low-power extension applications filed in July 1992.
15 And I would ask you do you recognize these as the applications
16 that Raystay filed in July 1992?

17 A Yes, I do.

18 Q Did you read these applications before you signed
19 them?

20 A I read the information that we had supplied, yes.

21 Q And did you discuss with anyone at the time or in
22 connection with your review of these applications did you
23 discuss the contents of these applications with anyone?

24 A I don't believe I did.

25 Q Did you make any changes to the application as it

1 came to your desk?

2 A I don't recall whether I made changes or not.

3 Q Now did you, did you realize at the time that
4 Exhibit 1 of these applications was identical to the Exhibit 1
5 that had been filed with the December 1991 application?

6 A No, I did not.

7 Q Did you go back -- when you were reviewing the July
8 1992 applications, did you go back at that time and check what
9 Raystay had said earlier in the December 1991 applications?

10 A No, the file did not come with these, and I did not
11 go look at it.

12 Q But you knew that, you knew that -- you had in mind,
13 you recalled that Raystay had previously filed the other
14 applications in December?

15 A Yes, I remembered that.

16 Q And, and you, you knew, of course, that the
17 Commission had granted the extension for a period of 6 months.

18 A Yes.

19 Q But you were not aware, in other words, your state
20 of mind when you reviewed this in July 1992 is that you were
21 not aware that Exhibit 1 in these applications was identical
22 to --

23 A No, as I say, I reviewed it for what was there to
24 make sure it was correct to the best of my knowledge. And I
25 did not compare it with the previous applications at all.

1 Q So it was not your state of mind then I take it that
2 in July of 1992 that, that the statements made in Exhibit 1
3 were exactly the same statements that had previously --

4 A I did not realize that, no.

5 Q Now when you signed the, these applications in July
6 of 1992, did you know of any discussions between Raystay and
7 equipment suppliers that had occurred between December 1991
8 and July 1992?

9 A I believe I was staying current with the JMAR
10 Transmitter Group. I know I had an active file on that.
11 There probably was some activity in the Acrodine (phonetic
12 sp.) file.

13 Q Well, are you -- you're saying probably --

14 A With, with me --

15 Q -- and believe. I'm asking, I'm asking for your
16 state of mind as of July 1992. Do you -- can you sit here
17 today and testify with certainty in your mind that you had
18 discussions with equipment suppliers about equipment for these
19 new low-power stations between December 1991 and July 1992?

20 A No, I can't say exactly what discussions I had.

21 Q Now --

22 JUDGE CHACHKIN: Do you recall the dates? Are you
23 certain about the dates of these discussions?

24 MR. GARDNER: No. But the, the JMAR equipment was
25 something that I had taken an interest in because of it's

1 state-of-the-art technology. And I was very interested in
2 staying current with that. I know I kept a personal file on
3 JMAR. And I feel that I updated that file as they would be in
4 touch with me.

5 BY MR. EMMONS:

6 Q Were, were your discussions that you just referred
7 to with equipment suppliers related specifically to
8 development of these new construction permits?

9 A Yes, it was.

10 Q And not to TV40.

11 A No, TV40 had a transmitter. And the biggest cost of
12 equipment in a low-power television station is its
13 transmitter. And the transmitter technology had been pushed
14 pretty far by the JMAR Company. And that's why I got
15 interested in them. And in fact, I had an interest aside from
16 the fact that we had the construction permit. Because I was
17 very much interested in their technology.

18 Q Now at the time in July 1992 when you signed these
19 applications, were you aware of any lease negotiations with
20 the antenna site owners that occurred between December 1991
21 and July 1992?

22 A No, I was not.

23 Q Were you aware when you signed these in July 1992 of
24 any visit to the Lebanon or Lancaster antenna sites by either
25 a representative of Raystay or an engineer that had occurred

1 between December 1991 and July 1992?

2 A No. I, I had the interpretation on this like I said
3 on the other application for renewal that it applied to the
4 original application.

5 Q In July 1992 when you signed these applications,
6 were you aware of any research undertaken between December
7 1991 and July 1992 to determine the programming that would be
8 offered on the new LPTV stations?

9 A Well, I personally recall a meeting where I
10 discussed with the manager of the Harrisburg cable system the
11 programming that he would like to see on the network if we
12 could get it running. His name was Henry Lockhart. And I
13 recall meeting him at a meeting, at a Pennsylvania Cable
14 Academy meeting in January. He's the only one of the cable
15 managers that I saw there, or I would have discussed it with
16 the other ones too.

17 Q January of what year?

18 A January of 1992.

19 Q Now you did not remember that at your deposition,
20 did you?

21 A I, I don't believe I did remember that at the
22 deposition, no. I, I don't think that's in there.

23 Q At the time you signed these applications in July
24 1992, were you aware of any discussions between Raystay and
25 program suppliers that occurred between December 1991 and July

1 1992?

2 A I had had none, and I wasn't aware of any, no.

3 Q And were you aware in July 1992 when you signed
4 these applications of negotiations occurring between December
5 1991 and July 1992 between Raystay and local cable operators?

6 A I wasn't aware of any, no.

7 Q Now who presented the July 1992 applications to you
8 for your review and signature?

9 A I believe Lee Sandifer was on vacation. And David
10 Gardner gave them to me and informed me that they had to be
11 processed before Lee Sandifer would return from vacation.

12 Q So they came to you directly from David Gardner.

13 A Yes.

14 Q And, and Lee Sandifer did not review them to your
15 knowledge.

16 A To my knowledge, that's correct.

17 Q And you went ahead and signed them, and they were
18 filed without Mr. Sandifer as far as you know --

19 A I reviewed them for everything that I knew about in
20 there and relied on David and Mr. Cohen for preparation of the
21 balance of it.

22 Q So you were not relying in July 1992 on any comfort
23 given to you from the review by Mr. Sandifer?

24 A That's correct.

25 Q And you were willing to proceed without that

1 comfort?

2 A I was informed that we had to process them before he
3 would return from vacation. And I could see nothing that I
4 disagreed with in the applications.

5 MR. EMMONS: Your Honor, this -- I'm looking at my
6 watch. This would be a convenient break point if --

7 JUDGE CHACHKIN: You have much more?

8 MR. EMMONS: I think I may have about another 30
9 minutes, Your Honor.

10 JUDGE CHACHKIN: All right. We'll be in recess
11 until 9 a.m. tomorrow.

12 (Whereupon, at 4 p.m., the hearing was recessed, to
13 be continued on January 27, 1994 at 9 a.m.)

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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN THE MATTER OF TRINITY BROADCASTING OF FLORIDA, INC.
Name AND GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75

Docket No.

WASHINGTON, D.C.

Place

JANUARY 26, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 5128 through 5289, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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